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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,543	02/10/2004	Bruce K. Bitowft	540.62	3118
27019	7590	09/20/2005	EXAMINER	
THE CLOROX COMPANY 1221 BROADWAY PO BOX 2351 OAKLAND, CA 94623			BOECKMANN, JASON J	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/776,543	Applicant(s) BITOWFT ET AL.	
	Examiner Jason J. Boeckmann	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/10/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 10- 14, 16, 21-25, 27, 32 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Foster et al (6,688,671).

Foster et al shows a trigger sprayer (10) for manually dispensing fluid from a container, a housing (58) defined by at least two side walls, a top wall and a bottom wall, which is adapted for supporting the sprayer on a user's hand (figure 1), a pump (14) situated within the housing (58), an inlet passageway (26) for connecting fluid from a container to the pump (14), an outlet passage (22) for allowing exit of fluid from the pump (14), and a trigger (62) operatively connected to the pump (14). The trigger includes a lever (62), pivotally mounted on the housing (58), for engaging the pump (14), having a finger-engaging surface (76), with an upper section, middle section and lower section where the middle section has a width that is shorter than the widths of the upper and lower sections (figure 5). In regards to claims 2, 3, 13, 14, 24 and 25, the finger-engaging surface has a concave shaped contour (62) and at least one gripping surface area (76). In regards to claims 5, 10, 16, 22, 27 and 33, the finger-engaging

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surface has an hourglass configuration and at least a portion of the perimeter edge is rounded (figure 5). With respect to claims 10, 21 and 32, the pump (14) includes a pump chamber (14) and the upper section of the lever (62) is operatively attached to a reciprocally slideable piston (52) within the pump chamber (14)(column 4, line 11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4, 15 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al (6,886,718) in view of Foster et al (5,762,236).

Foster et al (6,886,718) discloses the applicant's invention as set forth in claims 1 and 3 above, but does not include at least one gripping surface area made from an elastomeric material. However, Foster et al (5,762,236). Shows a trigger (26) that includes at least on gripping area (228, 232) formed from an elastomeric material, which is softer than the rest of the trigger. It would have been obvious to one of ordinary skill in

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the art at the time of the applicant's invention, to add the elastomeric gripping surface of Foster et al (5,762,236) to the trigger lever of Foster et al (6,886,718) in order to make the lever more comfortable to grip.

Claims 6-9, 17-20 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al (6,886,718).

Foster et al discloses the applicant's invention as set forth in claim 1 above including a hand held trigger sprayer with a finger actuated lever. Given a hand held, finger actuated lever, the dimensions listed appear to be within the ranges of such a device. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include a lever of the dimensions listed due the average length and width of the human fingers designed to actuate the lever.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sweeton (6,332,562) shows a trigger sprayer (10) for manually dispensing fluid from a container including a lever. Hengesbach (Des. 282,392) shows an hourglass shaped lever.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason J. Boeckmann whose telephone number is (571) 272-2708. The examiner can normally be reached on 7:30 - 5:00 m-f, first Friday off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Scherbel can be reached on (571) 272-4919. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JJB



David A. Scherbel
Supervisory Patent Examiner
Group 3700